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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARILYN MARTINEZ,

Plaintiff,

-against-

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.
-----X

06 Civ. 3384 (PAC)(HBP)

ORDER

HONORABLE PAUL A. CROTTY, United States District Judge:

Plaintiff Marilyn Martinez ("Martinez") applied for disability insurance benefits from the Social Security Administration ("SSA") after suffering an injury at work. The Commissioner of Social Security ("Commissioner") denied her application. Martinez seeks judicial review of the Commissioner's decision pursuant to Section 205(g) of the Social Security Act, 42 U.S.C. § 405(g). Both Martinez and the Commissioner have moved for judgment on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure.

Martinez was employed by the New York City Board of Education from May 1993 until November 2002. She supervised and assisted students with severe emotional and physical disabilities; her responsibilities included lifting and handling the students, pushing their wheelchairs, and changing their clothes. While at work on November 27, 2002, Martinez slipped and fell down stairs, injuring her neck, lower back, and right knee. She subsequently missed work and was terminated from her position.

On May 20, 2004, Martinez filed an application for disability benefits with the SSA. The SSA denied her application on August 17, 2004. Martinez then requested, and was granted, a

hearing before Administrative Law Judge (“ALJ”) Wallace Tannenbaum, which was held on December 8, 2005. At the hearing, Martinez testified that she was unable to work because she could not stand or sit for an entire eight-hour workday. In a decision dated January 3, 2006, however, ALJ Tannenbaum held that Martinez had sufficient “residual functional capacity” to perform sedentary work, and denied her application for benefits. ALJ Tannenbaum’s decision became the final decision of the Commissioner on March 16, 2006, when the Appeals Council denied Martinez’s request for review.

On May 3, 2006, Martinez filed the instant Complaint, seeking judicial review of the Commissioner’s decision. The matter was assigned to this Court, which in turn referred it to Magistrate Judge Henry Pitman for general pretrial. The parties cross-moved for judgment on the pleadings.


On March 9, 2009, Magistrate Judge Pitman issued a Report and Recommendation (“R&R”) recommending that the Court deny the Commissioner’s motion and grant Martinez’s motion by remanding the matter for further administrative proceedings. Magistrate Judge Pitman identified three deficiencies in the ALJ’s decision. First, he found that the ALJ failed to set forth adequate reasons for rejecting the opinion of Dr. Edward Merker, who treated Martinez and determined that her injuries would require her to rest for approximately four hours out of each eight-hour workday. (R&R at 26-33.) Second, he found that the ALJ’s conclusion that Martinez retained sufficient residual functional capacity to carry out sedentary work was insufficiently supported by medical source statements. (Id. at 33-35.) Finally, Magistrate Judge Pitman found that the ALJ inadequately assessed the credibility of Martinez’s own testimony regarding her injuries and impairments. (Id. at 35-40.)

Neither party has objected to the R&R. "To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." Wilds v. United Parcel Serv., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).

Having found no clear error, the Court adopts Magistrate Judge Pitman's R&R in its entirety. The Commissioner's motion for judgment on the pleadings is DENIED, and Martinez's motion for judgment on the pleadings is GRANTED to the extent of remanding this matter to the Commissioner for further administrative proceedings consistent with Magistrate Judge Pitman's findings.

Dated: New York, New York
July 16, 2009

SO ORDERED



PAUL A. CROTTY
United States District Judge

Copies to: Honorable Henry B. Pitman
United States Magistrate Judge

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